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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,170	10/12/2001	Richard H. Balmer	A148 1550	2857

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EXAMINER

FISCHER, JUSTIN R

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,170

Applicant(s)

BALMER ET AL.

Examiner

Justin R Fischer

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,17-22,24-27,29,40,42,44,46 and 48-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,17-22,24-27,29,40,42,44,46 and 48-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>060704</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Pages 10-13, filed June 7, 2004, with respect to the rejection(s) of claim(s) 1, 2, 4-10, 12-22, 24-29, 34, 36-47 under 35 U.S.C. 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lemoine (EP 888859).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-6, 8, 17-20, 22, 24, 25, 27, 40, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemoine (EP 888859, newly cited). As best depicted in Figure 1, Lemoine discloses the manufacture of a floor covering from a plurality of agglomerated particles, wherein said agglomerated particles are defined by multi-colored particles (1,3,5,7). The different colored particles are seen to constitute "a first particle having a first visual characteristic and a second particle having a second visual characteristic (color) different than the visual characteristic of said first particle. Thus, the floor covering is a blend of agglomerates comprising differently colored particles (agglomerates are deposited onto conveyor 21 and blended or combined into the finished product).

With respect to claims 4 and 18, the particles can be selected from a wide variety of known materials, preferably PVC (Page 3, Lines 2-6).

As to claims 5 and 6, the particles of Lemoine have different colors and thus the particles are seen to be formed of different materials (different colors are formed by inclusion of different materials/pigments/dyes). The claim as currently drafted does not require the use of different thermoplastic materials for respective particles (appears that such a design is intended)

Regarding claims 8 and 22, a plurality of agglomerates having different visual characteristics is deposited on conveyor 21. It is emphasized that the mixing and shredding would be expected to form agglomerates having different visual characteristics (as a result of different combination or amount of certain colored particles).

As to claims 19 and 20, the blend of agglomerated particles is consolidated by a series of calendar rolls.

Regarding claim 24, the agglomerated particles are ground or shredded as indicated by reference character 19.

With respect to claim 25, as noted above, the agglomerates are defined by multi-colored particles.

As to claim 27, the respective particles have a number average molecular weight- the claim does not require any relationship between the number average molecular weight of each particle.

Regarding claims 40 and 42, the floor covering of Lemoine is described as having a slight marbling or clouding, which is seen to constitute a labyrinthine. Also, applicant acknowledged in the amendment dated October 3, 2003 (Page 13) that such an arrangement is inherent.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 6, 7, 21, 26, 29, 44, 46, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine as applied in the previous paragraph and further in view of Hover (US 4,923,658, of record). In describing the floor covering, Lemoine broadly states that any suitable material can be used to form the colored particles, such as PVC. The reference, however, is completely silent as to the specific makeup of the particles (e.g. additives). In any event, one of ordinary skill in the art at the time of the invention would have found it obvious to form the particles of Lemoine with different filler contents (for example, with and without fillers) since such a makeup is consistent with the manufacture of floor coverings, as shown for example by Hover (Column 3, Lines 50-60 and Example 6). Thus, it is well recognized that particles having different filler contents can be included in a floor covering assembly. Absent any conclusive showing of unexpected results, it would have been within the purview of one of ordinary skill in

the art at the time of the invention to include particles having different filler contents, for example particles with and without filler.

As to claim 6, the claim as currently drafted does not require that two different starting materials, for example a first and second thermoplastic material, are mixed to form the agglomerate. In any event, if such an embodiment is intended, it is clear that the specific selection would be dependent on the type of floor covering and desired aesthetic effect. It is noted that Hover states that the blends or particles can be from various origins, colorings, structures, and/or grain distribution (Column 4, Lines 40-45)- this suggests that the first and second material that make up the first and second particles can be different.

Regarding claims 7, 26, 29, and 55, Lemoine specifically states that different colored particles are used to form the floor covering. While there is no express disclosure to use transparent or translucent particles, it is well recognized that such particles are used in the manufacture of floor coverings formed of differently colored particles, as shown for example by Hover (Column 2, Lines 50-57, Column 3, Lines 50-60, and Column 4, Lines 1-10 and Lines 40-45). The specific selection of such particles is dependent on the desired aesthetic effect.

As to claim 21, Hover describes the plurality of well known compressions means, including rolling mills, single belt presses, and twin belt presses (Column 3, Lines 20-25). One of ordinary skill in the art at the time of the invention would have found it obvious to use any of the well known compression/lamination means in the method of Lemoine absent any conclusive showing of unexpected results.

With respect to claims 44 and 46, Lemoine describes the mixing of differently colored particles to form agglomerated particles. While the term "particles" is not described in detail, it is well known in the floor covering industry that the particles themselves can actually be agglomerates that are further processed or mixed, as shown for example by Hover (Column 4, Lines 10-20 and Column 11, Lines 15-20). Again, the specific form of the starting materials (either in particle form or agglomerate form) would have been well within the purview of one of ordinary skill in the art at the time of the invention and dependent on the specific floor covering being manufactured. It is emphasized that the description of "particles" by Lemoine does not exclude the materials being in agglomerate form- both "particles" and agglomerates are recognized as starting materials in the manufacture of floor coverings.

6. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine as applied in Paragraph 3 above and further in view of Weidman (GB 2,056,462, newly cited). As previously noted, Lemoine suggests the formation of a multi-colored floor covering by incorporating a plurality of random particles, flakes, or chips. While the reference fails to expressly described the particles as being a "dry blend", such particles are conventionally used in the manufacture of a wide variety of articles, including floor coverings, as shown for example by Wiedman (Page 1, Lines 9-58). As such, one of ordinary skill in the art at the time of the invention would have found it obvious to use "dry blend" particles in the method detailed by Lemoine. It is emphasized that "dry blend" particles represent an extremely common form that is extensively used in the manufacture of floor coverings.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Justin Fischer

September 2, 2004


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